



**OFFICE OF COMPLIANCE, EQUAL OPPORTUNITY &
AFFIRMATIVE ACTION**

TO: Jeannie Reifsnyder, Senior Associate Vice President, Finance & Administration

FROM: Pamela Fitzgerald, Manager & Interim Title IX Coordinator, Office of Compliance, Equal Opportunity & Affirmative Action (EOAA) *(Signature)*

DATE: December 18, 2015

SUBJECT: Office of Compliance, EOAA Investigation Summary Report:
Lyndsey Maurer vs. Colin Miller, Senior Fiscal Manager

Allegations:

On September 15, 2015, Ms. Lyndsey Maurer filed a complaint with the Office of Equal Opportunity and Affirmative Action alleging Mr. Colin Miller has, for the past year to year and a half, repeatedly entered into her office using his master key, leaving her risqué notes and candy. Ms. Maurer believes this behavior is in violation of university policies 5-16 "University Policy Regarding Unlawful Discrimination and Harassment" and 5-16.2 "Administrative Policy Regarding Complaints of Unlawful Gender Discrimination, Gender/Sexual Harassment, Sexual Misconduct, Stalking, and Intimate Partner Violence."

Scope of Investigation:

The investigation included:

- Teleconference with Lyndsey Maurer, Director, Athletics Communications on September 15, 2015
- An meeting with Ms. Lyndsey Maurer on October 7, 2015
- An interview with Ms. Katie Schilling, Compliance Coordinator, Athletics on October 27, 2015
- An interview with Andrew Foster, Assistant Athletic Director, Facilities and Operations on October 27, 2015
- An interview with Elizabeth Lott, Business Analyst, Athletics on October 27, 2015
- An interview with Colin Miller, Senior Fiscal Manager, Athletics on November 5, 2015
- A telephone interview with Brice Biggin, Head Gymnastics Coach, Athletics on November 10, 2015
- Review of notes left on Ms. Maurer's desk by Mr. Miller provided by Ms. Maurer

- Review of email dated April 23, 2015, from Ms. Maurer to Mr. Miller
- Review of FaceBook post exchanges between Ms. Maurer and Ms. Miller dated August 29, 2015
- Review of email exchanges between Mr. Miller and Ms. Maurer on various dates provided by Ms. Maurer on October 9, 2015
- Review of email exchanges between Ms. Maurer and Mr. Miller on various dates provided by Mr. Miller on November 10, 2015

Investigative Review:

Ms. Maurer alleges that about a year to year and half after she begin working in her position in the Athletics department, Mr. Miller started giving her candy every so often, and then notes started being left in her desk with the candy. She also alleges that notes would be left on her personal vehicle by Mr. Miller. Ms. Maurer alleges he “friended” her on Facebook last year and started sending her the same type of messages on Facebook and through text messaging. She alleges he expressed his feelings for her on Facebook but that she quickly “shot him down” and told him she was not interested. She alleges she un-friended him on Facebook shortly after. Ms. Maurer alleges that Mr. Miller would request to follow her on Instagram but that she denied his requests. Additionally, Ms. Maurer also alleges that she has caught Mr. Miller looking down at her from the second floor while she’s in her office, making her feel nervous and uncomfortable. Ms. Maurer states she constantly looks over her shoulder and is nervous and uncomfortable just going to the restroom, fearing she will see Mr. Miller in passing.

In May, 2015, Ms. Maurer discussed her concerns with her previous supervisor, Mr. Devin Crosby, Deputy Athletics Director and Ms. Erin Barton, Affirmative Action Coordinator, but chose not to file a formal complaint at that time. On September 15, 2015, Ms. Maurer contacted Office of Compliance via telephone and expressed that she was ready to file a Title IX complaint against Mr. Miller.

Additionally, Ms. Maurer stated that Mr. Miller told a mutual co-worker of theirs, Ms. Elizabeth Lott, that they had a thing going on. Ms. Maurer denies that they have anything going on and Mr. Miller denies telling Ms. Lott anything of the sort. Ms. Maurer stated that she expressed to Mr. Miller that if he thought she was interested in hooking up with a married man that he did not know her very well.

Ms. Maurer alleges Mr. Miller would use his master key to enter her locked office and he would leave notes he created on a computer or he would cut out words and pictures to develop a message to her and leave these items on her desk, inside desk drawers or on her personal vehicle. These notes were provided to the EOAA investigator on September 17, 2015. Mr. Miller reviewed these notes on November 5, 2015 and confirmed they were the notes he had left in Ms. Maurer’s desk and vehicle.

In Mr. Miller’s written response to the complaint dated September 30, 2015, he stated this was a two-way relationship that went bad around the end of March 2015 after he stopped talking to her. Mr. Miller stated that Ms. Maurer sought him out for advice on buying a house. She states she got advice from other co-workers also. He also alleges

that she bought him a birthday cake on February 21, 2014, which Ms. Maurer denies. Mr. Miller did not offer evidence or a witness that could confirm this.

In his response, Mr. Miller alleges this was a “game” between him and Ms. Maurer. Mr. Miller stated there were numerous times they would not talk to one another and then they would start up again. Ms. Maurer denies this was a “game”. She states that she clearly stated in an email to him dated April 23, 2015 that the notes and candy had to stop and that she was uncomfortable with him. Mr. Miller replied back to that email apologizing for making her feel uncomfortable and stated he would be professional with her from that point forward. During the week of August 27, 2015, Ms. Maurer received another note and candy from Mr. Miller. The note stated “I miss your smile”.

On October 27, 2015, EOAA investigator interviewed Ms. Katie Schilling, Compliance Coordinator. Ms. Schilling states she did not seem to think the interaction between Ms. Maurer and Mr. Miller was mutual. Her perception was that it was Mr. Miller who pursued Ms. Maurer. Ms. Schilling states she has personally witnessed Mr. Miller looking and positioning himself behind female athletes to look at their bodies or butts. Ms. Schilling states that it’s a running joke in Athletics that if you can’t find Mr. Miller, look in gymnastics and you’ll find him there.

On October 27, 2015, EOAA investigator interviewed Mr. Andrew Foster, Assistant Athletic Director, Facilities and Operations. Mr. Foster confirms he did witness Mr. Miller exiting Ms. Maurer’s office in the summertime before 8:00am but could not recall the date. Mr. Foster stated he informed Ms. Janet Kittell, Deputy Director. Mr. Foster states Mr. Miller has a history of sitting in and watching the gymnastic practices.

On October 27, 2015, EOAA investigator interviewed Ms. Elizabeth Lott, Business Analyst. Ms. Lott stated that Mr. Miller would show her the pictures and/or messages he planned to give to Ms. Maurer. Ms. Lott states that this situation between Ms. Maurer and Mr. Miller is definitely one-sided, with Mr. Miller being the pursuer. Ms. Lott states that Mr. Miller has made comments such as “Ima get her” or “Ima corner her” referencing Ms. Maurer. Ms. Lott has also stated that it’s a running joke in athletics if you can’t find Mr. Miller, check in gymnastics, because he’s in there watching.

On November 5, 2015, EOAA investigator interviewed Mr. Miller. Mr. Miller alleges that Ms. Maurer became upset and angry when he started seeing someone else and that he decided to stop talking to her. Mr. Miller states there was never any physical contact with Ms. Maurer, and that he would classify their relationship as a “game” and a “childhood flirtation”. However, Ms. Maurer did not see it as “game” and considered the matter very serious. Mr. Miller also alleges that Ms. Maurer’s motivation in filing this complaint is her supervisor, Ms. Janet Kittell. Ms. Maurer denies being encouraged or coerced in to filing this complaint. Additionally, Mr. Miller states that his interest in watching the gymnastics athletes is because he gives them advice and guidance on their education. Mr. Miller denied ever using his master key to enter Ms. Maurer’s office and stated Ms. Maurer’s office door was not locked the times he entered there. Ms. Maurer

denies that her door was not locked; she states that she always locks it when leaving for the day but maintains the exterior door outside her office is not locked.

On November 6, 2015, EOAA investigator interviewed Mr. Joel Nielsen, Athletic Director. Mr. Nielsen is not aware of any previous complaints regarding Mr. Miller. Mr. Nielsen stated that in September 2015, after receiving notice of the complaint at hand, he met with Mr. Miller to advise him that if the accusations are true, his actions are inappropriate and needed to stop immediately. Mr. Nielsen provided the EOAA investigator evidence of notes that Mr. Miller had given to Ms. Maurer over a period of time. Mr. Nielsen was asked by the EOAA investigator what the impact would be in relocating Mr. Miller out of athletics, Mr. Nielsen stated it would be somewhat impactful but manageable.

On November 10, 2015, EOAA investigator interviewed Mr. Brice Biggin, Head Gymnastics Coach. Mr. Biggin stated he has never seen any notes or candy and never witnessed any interaction between Ms. Maurer and Mr. Miller. Mr. Biggin states Mr. Miller and he are friends and went to high school together. Mr. Biggin states Mr. Miller told him about the situation between him and Ms. Maurer. Mr. Biggin stated that Mr. Miller indicated that it was a two-way conversation and they both texted and emailed one another. Mr. Biggin confirms that Mr. Miller does watch their gymnastics practices and he has never received a complaint from anyone that it was a problem.

Applicable Policies:

University policy 5-16 defines the following:

Unlawful discrimination. An intentional or unintentional act that adversely treats or impacts an individual in a protected category in employment, or in academic or non-academic decision making based on the protected category.

Unlawful harassment. Includes intimidation, ridicule or insults that are sufficiently severe, pervasive or persistent as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by the University; creates an intimidating, hostile or offensive working and/or learning environment; or otherwise adversely affects an individual's work or learning opportunities, and is based on an individual's race, color, religion, gender, sexual orientation, national origin, ancestry, disability, genetic information, age, military status, identity as a disabled veteran or veteran of the Vietnam era, recently separated veteran, or other protected veteran.

Hostile environment. An hostile environment may be created by oral, written, graphic or physical conduct that is sufficiently severe, persistent, or pervasive so as to interfere with or limit the ability of an individual to participate in or benefit from the university's academic, student, residential, or employment programs or activities and is based on a protected class.

University policy 5-16.2 further defines sexual harassment as:

Gender/sexual harassment. Sexual harassment is a form of unlawful gender discrimination and is defined as unfavorable or unwelcome treatment, made without consent and based on a person's gender or sex, that is severe or pervasive and has the purpose or effect of unreasonably interfering with an individual's employment or academic performance or creates an intimidating, hostile or offensive working, academic or university environment. Sexual harassment includes, but is not limited to:

- (a) Verbal and/or physical behavior including, but not limited to: sexually explicit jokes, insults, and taunts; obscene gestures; offensive pictorial, written, and electronic communications; and unwelcome touching.
- (b) Any of the conduct described in paragraphs (C)(1) to (C)(5) of this rule used by an individual implicitly or explicitly as the basis for employment, administrative, or academic decisions (including submission to or rejection of any such conduct), is considered sexual harassment.

Stalking. Stalking is behavior commonly associated with gender-based harassment and violence, and is therefore prohibited by the university gender discrimination policy. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety, fear for the safety of others, or suffer substantial emotional distress. For the purposes of this definition:

- (a) Course of conduct is defined as two or more acts, including, but not limited to, acts in which the stalker directly indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, threatens, or communicates to or about, a person, or interferes with a person's property.
- (b) Substantial emotional distress is defined as significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- (c) Reasonable person means a reasonable person under similar circumstances and with similar identities to the alleging party.

Findings:

The question at hand is whether Mr. Miller's behavior was "severe or pervasive" and "unreasonably interfered" with Ms. Maurer's employment, per university policy quoted above. It is clear from Ms. Maurer's complaint, emails and social media posts between the two parties and the interviews conducted that Mr. Miller's repeated behavior was inappropriate, unacceptable and created an hostile and offensive work environment and interfered with her employment to the point where she avoids the common areas where she works and any interaction with him because she feels uncomfortable. Additionally,

Mr. Miller misused his authority to enter Ms. Maurer's office using his master key on more than one occasion without her permission. EOAA investigation did not deem Mr. Miller's individual actions as "severe" but definitely regarded his behavior and conduct as "pervasive or persistent". After she informed him to stop with the candy and notes in an email dated April 23, 2015, he continued to do so until the last time in August 2015. It appeared from interviewing witnesses that this was a one-sided situation and not a mutual affection between the two. Mr. Miller's conduct has caused Ms. Maurer emotional stress and fear in going to common areas in the workplace.

Recommendations:

The Office of Compliance, Equal Opportunity and Affirmative Action has already implemented interim measures by issuing a no contact order to both parties on September 16, 2015. This office recommends that Mr. Miller receive a 10-day unpaid suspension; that a last chance agreement be implemented (contact Karen Watson in employee relations); that his office be relocated out of the Memorial Athletic and Convocation Center (MACC) by January 31, 2016; that his master key access be eliminated; and that he complete a management referral to IMPACT Solutions for counseling. This office recommends that the no contact orders that were issued to both parties by the Interim Title IX Coordinator on September 16, 2015 remain in effect indefinitely. Lastly, the last chance agreement should state that if Mr. Miller is found to have violated policy 3342-5-16.2 again in the future, his employment with Kent State University shall be terminated immediately.

Please inform this office in writing by **January 15, 2016** what course of action and/or sanctions has been taken or implemented in this matter.

This concludes the internal investigation by the Office of Compliance, Equal Opportunity and Affirmative Action.

cc: Joel Nielsen, Athletic Director
Willis Walker, Interim Vice President for Human Resources
David Ochmann, Associate Vice President and Deputy General Counsel
Courtney E. Calhoun, Director, Office of Compliance, Equal Opportunity & Affirmative Action
Lyndsey Maurer, Complainant
Colin Miller, Respondent